

BEFORE THE

APR 26 2004

Federal Communications Commission

WASHINGTON, D C 20554

Federal Communication Commission
Bureau / Office**ORIGINAL**

In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations)

(Arlington, The Dalles, Moro, Fossil, Astoria,)

Gladstone, Tillamook, Springfield-Eugene,)

Coos Bay, Manzanita and Hermiston, Oregon)

and Covington, Trout Lake, Shoreline, Bellingham,)

Forks, Hoquiam, Aberdeen, Walla Walla, Kent,)

College Place, Long Beach and Ilwaco, Washington))

MB Docket No. 02-136

To Assistant Chief, Audio Division, Media Bureau

STATEMENT REGARDING ORDER TO SHOW CAUSE

Triple Bogey, LLC; MCC Radio, LLC and KDUX Acquisition, LLC (collectively "Triple Bogey") herein present the following statement with respect to the *Order to Show Cause*, DA 04-607, released in the above-captioned proceeding on March 12, 2004

Background. Triple Bogey, through a counterproposal filed in response to the *Notice of Proposed Rule Making* in this proceeding,¹ is requesting, *inter alia*, that Channel 283C2 be substituted for Channel 284C2 at Aberdeen, Washington, and then reallocated to Shoreline, Washington. Triple Bogey further requests that the license of KDUX-FM, which currently operates

¹ *Arlington, Oregon, et al.*, 17 FCC Rcd 10,678 (Media Bur. 2002).

on Channel 284C2 at Aberdeen, be modified to specify operation on Channel 283C2 at Shoreline. To accommodate the allotment at Shoreline, Triple Bogey requests that Channel 281C be substituted for Channel 282C at Bellingham, Washington, and that the license of Station KAFE(FM) be modified to specify operation on Channel 281C.

The above-referenced *Order to Show Cause* is directed to Saga Broadcasting Corporation (“Saga”), licensee of Station KAFE. The *Order to Show Cause* correctly notes that the license of KAFE can be modified to specify operation on Channel 281C at the station’s currently authorized transmitter site. The Canadian government, however, has not agreed to unlimited Class C operation on Channel 281 at that site. KAFE’s signal would need to be limited to 49.2 kilowatts ERP at 600 meters HAAT, or the equivalent, toward the vacant allotment of Powell River, British Columbia (314.6° azimuth) and 58.2 kilowatts at 600 meters HAAT, or equivalent, toward the vacant allotment of Channel 281A at Bralorne, British Columbia (0.4° azimuth).²

As the *Order to Show Cause* notes, Saga has consented to these power restrictions in an agreement between it, First Broadcasting Company, L.P. and Mid-Columbia Broadcasting, Inc. (collectively “the Joint Petitioners”). The parties entered into the agreement in order to accommodate the proposed relocation of Station KMCQ(FM), Channel 283C3, The Dalles, Oregon, to Kent, Washington, and the substitution of Channel 283C2 for Channel 283C3.

² Significantly, as Triple Bogey has demonstrated, the reduction in KAFE’s power toward these two vacant allotments would result in ***absolutely no change*** in the area and population within the United States covered by the KAFE 60 dBu or 70 dBu contours. See Triple Bogey Comments and Counterproposal, pp. 18-19 & Exhibit A thereto (Engineering Statement of Hatfield & Dawson) at pp. 16-17. Furthermore, there would be no reduction in power in the direction of Bellingham, KAFE’s community of license. *Id.*, Exhibit A at pp. 17-18.

The *Order to Show Cause* directs Saga and the Joint Petitioners to disclose the consideration that Saga is to receive under the agreement for the modification of Station KAFE's facilities. The order also directs the Triple Bogey parties to state whether they would pay Saga the same consideration to permit the Shoreline reallocation.

Statement As of this time, Saga and the Joint Petitioners have not yet disclosed the consideration that Saga is to receive under their agreement to modify KAFE. Nonetheless, Triple Bogey states that if the consideration specified in that agreement is commercially reasonable under the circumstances and if the Commission requires Triple Bogey to match such consideration as a precondition to adoption of the Shoreline allotment proposal, Triple Bogey will pay such consideration. Obviously, Triple Bogey cannot determine whether such consideration is commercially reasonable until the terms of the agreement are disclosed. Assuming that Saga and the Joint Petitioners disclose such consideration on the April 26, 2004, response date specified in the *Order to Show Cause*, Triple Bogey promptly thereafter will confirm whether, in its determination, the consideration is commercially reasonable. If it is, Triple Bogey also will confirm its willingness to pay such consideration to Saga in order to secure modification of KAFE's facilities to accommodate the Shoreline allotment.³

³ The statement made herein is presented with the objective of reaching a prompt resolution of this proceeding, with the end result being the relocation of Station KDUX-FM to Shoreline, Washington. Triple Bogey, however, has not abandoned its original position and retains the right to assert that position if subsequent developments in this proceeding make it necessary to do so. Triple Bogey's position, fully set forth in its earlier pleadings, may be summarized as follows: Because the reduction of KAFE's power toward the Bralorne and Powell River allotments will not result in any change in the area and population within the United States covered by the KAFE 60 dBu and 70 dBu contours, and because the treaty between the United States and Canada relating to FM broadcasting service (the "*Working Agreement*") affords protection only within the bounds of the country in which the allotment is located, nothing in the *Working Agreement* nor Commission

WHEREFORE, pursuant to Section 316(a) of the Communications Act of 1934, as amended, and Section 1.87 of the Commission's Rules, the license of Station KAFE, Bellingham, Washington, should be MODIFIED to specify operation on Channel 281C in lieu of Channel 282C.

**TRIPLE BOGEY, LLC, MCC RADIO, LLC
and KDUX ACQUISITION, LLC**

By: 

Matthew H. McCormick
Their Counsel

Reddy, Begley & McCormick, LLP
1156 15th Street, N.W., Suite 610
Washington, D.C. 20005-1770
(202) 659-5700

April 26, 2004

policy or precedent precludes the adoption of Triple Bogey's proposal with respect to KAFE, provided that Triple Bogey reimburses Saga for the reasonable costs it incurs in changing KAFE's facilities (including the cost of acquiring, installing and adjusting a new directional antenna for the station) pursuant to the guidelines set forth in *Circleville, Ohio*, 8 FCC 2d 159 (1967)

CERTIFICATE OF SERVICE

I, Janice M. Rosnick, do hereby certify that I have on this 26TH day of April, 2004, caused to be hand delivered or mailed via First Class Mail, postage prepaid, copies of the foregoing STATEMENT REGARDING ORDER TO SHOW CAUSE to the following:

John A. Karousos*
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau, Room 3-A266
Federal Communications Commission
445 Twelfth Street, S W
Washington, D.C. 20554

Robert Hayne*
Audio Division
Mass Media Bureau
Federal Communications Commission
Room 3-A262
445 Twelfth Street, SW
Washington, DC 20554

Mark N Lipp, Esq.
Vinson & Elkins, LLP
1455 Pennsylvania Ave., N.W., Suite 600
Washington, DC 20004
Counsel for FIRST BROADCASTING COMPANY, L.P.

J. Dominic Monahan, Esq.
Luvaas Cobb Richards & Fraser, PC
777 High Street
Suite 300
Eugene, OR 97401
Counsel for MID-COLUMBIA BROADCASTING, INC.

Gary S. Smithwick, Esq.
Smithwick & Belendiuk, PC
5028 Wisconsin Avenue, NW, Suite 301
Washington, DC 20016
Counsel for SAGA BROADCASTING CORP.

Alco Services, Inc.
P O. Box 450
Forks, WA 98331
Licensee of STATION KLLM(FM)

M. Anne Swanson, Esq.
 Nam E. Kim, Esq.
 Dow, Lohnes & Albertson, PLLC
 1200 New Hampshire Avenue, NW
 Suite 800
 Washington, DC 20036
 Counsel for NEW NORTHWEST BROADCASTERS, LLC

Dennis J. Kelly, Esq.
 Law Office of Dennis J Kelly
 P O. Box 41177
 Washington, DC 20018
 Counsel for TWO HEARTS COMMUNICATIONS, LLC

Howard J. Barr, Esq.
 Womble Carlyle Sandridge & Rice, PLLC
 1401 Eye Street, NW, 7th Floor
 Washington, DC 20005
 Counsel for MERCER ISLAND SCHOOL DISTRICT and
 PENINSULA SCHOOL DISTRICT NO. 401

Cary S. Tepper, Esq.
 Booth Freret Imlay & Tepper, PC
 7900 Wisconsin Avenue, Suite 304
 Bethesda, MD 20814-3628
 Counsel for BAY CITIES BUILDING COMPANY, INC.

James P. Riley, Esq.
 Fletcher Heald & Hildreth, PLC
 1300 North 17th Street, 11th Floor
 Arlington, VA 22209
 Counsel for SALEM MEDIA OF OREGON, INC.

Charles R. Naftalin, Esq.
 Holland & Knight, LLP
 2099 Pennsylvania Avenue, NW, Suite 100
 Washington, DC 20006-1813
 Counsel for McKENZIE RIVER BROADCASTING CO., INC.

Chris Goelz
 8836 SE 60th Street
 Mercer Island, WA 98040

Robert Casserd
 4735 N.E. 4th Street
 Renton, WA 98059

Gretchen W. Wilbert
Mayor, City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335

Ron Hughes, President
Westend Radio, LLC
P O. Box 145
Hermiston, OR 97838

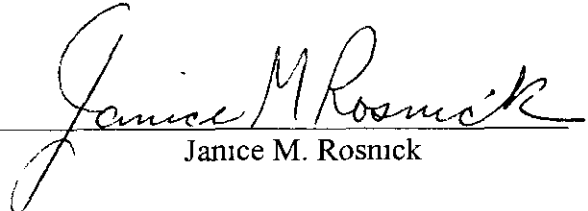
Oregon Eagle, Inc.
P. O. Box 40
Tillamook, OR 97141

Rod Smith
13502 NE 78th Circle
Vancouver, WA 98682-3309

Merle E. Dowd
9105 Fortuna Drive, #8406
Mercer Island, WA 98040

First Broadcasting Investment Partners, LLC
750 N St. Paul, 10th Floor
Dallas, TX 75201
Licensee of STATION KLLM, Forks, WA

Harry F. Cole, Esq.
Fletcher Heald & Hildreth, PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209-3801
Counsel for CRISTA MINISTRIES, INC.


Janice M. Rosnick

* Hand Delivered